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**IN THE UNITED STATES FEDERAL COURT, WESTERN DISTRICT OF  
PENNSYLVANIA**

DAVID FOX,

Case No.: 2:20-cv-1544

Plaintiff,

**COMPLAINT**

v.

UNITED STATES OF AMERICA

Defendant.

**PARTIES**

1. Plaintiff David Fox is an adult resident of Allegheny County, Commonwealth of Pennsylvania.
2. The United States Postal Service is an agency under the direction of the United States of America and Michael Caplan was, on June 27, 2018 at the time of the crash, an employee of The United States of America and/or United States Postal Service.
3. On June 27, 2018, Michael Caplan was operating a truck during the course and scope of his employment with the United States of America and/or the United States Postal Service.

### **JURISDICTION**

4. This action arises under 28 U.S.C. § 2671 et seq., the Federal Tort Claims Act and jurisdiction for this action arises under, 28 U.S. Code § 1346(b)(1), as the Plaintiff's harms and losses were caused by the negligence of an employee of the United States of America and their agency, United States Postal Service, Michael Caplan, while acting within the scope of his employment. Venue is proper within the Western District of Pennsylvania pursuant to 28 U.S.C § 1402(b) because David Fox, the Plaintiff, resides in this judicial district.
5. Pursuant to the provisions of 28 C.F.R. Part 14 and/or 28 U.S.C. § 2675, Plaintiff has provided Defendant United States with a proper and timely notice of his claim. An Amended Standard Form 95 was duly served on the United States Postal Service on January 6, 2020 which was less than two years from the date of the subject crash.
6. Mr. Fox's claim was denied by the agency in writing pursuant to 28 U.S.C. § 2401 on May 15, 2020.

### **FACTS**

7. On June 27, 2018, Michael Caplan was under the direct supervision, authority, employ and control of Defendant United States Postal Service. During all times material, Michael Caplan was assigned to be a postal truck driver.
8. As a postal truck driver under the Defendant's employ, Michael Caplan owed a duty to safely operate his vehicle under control and in a reasonable and prudent manner and to adhere to the federal, state, and municipal laws and traffic codes.

9. The intersection of Beulah Road with McCrady Street is located in the Churchill Borough of Allegheny County, Pennsylvania, and it is where Michael Caplan in his Ford F350 struck Plaintiff David Fox in his Honda.
10. Michael Caplan failed to yield the right of way and drove his vehicle directly into the path of Plaintiff David Fox when he attempted to make a left turn from McCrady Street onto Beulah Road and struck Plaintiff David Fox resulting in the crash happening in the intersection of Beulah Road and McCrady Street.
11. Michael Caplan was alleged to have violated Section 3714A of the Pennsylvania Motor Vehicle Code (Careless Driving) when he caused to crash between the USPS truck and Mr. Fox's car.

**COUNT ONE: VICARIOUS LIABILITY**  
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12. Plaintiff David Fox incorporates by reference all previous allegations as though specifically set forth herein.
13. As a direct and proximate cause of the negligent, careless and unlawful acts and omissions of the Defendant, and their employee and/or agent, Plaintiff David Fox suffered bodily injuries, including post traumatic bilateral osteonecrosis, radial tear of the posterior horn of the medial meniscus some of which may be permanent in nature, all to his general damage.
14. As a direct and proximate result of the negligent, careless, and unlawful acts and omissions of Defendant and their employee and agent, Plaintiff David Fox has incurred medical expenses and may incur medical expenses in the future.

15. As a direct and proximate cause of the negligent, careless and unlawful acts and omissions of Defendant and their employee and agent, Plaintiff David Fox has incurred economic losses including but not limited to lost income in the past and in the future.
16. As a direct and proximate cause of the negligent, careless and unlawful acts and omissions of Defendant and their employee and agent, Plaintiff David Fox has been caused to suffer damages, harms and losses of enjoyment of life, inconvenience, isolation, the inability to participate in life's activities, the freedom from pain normally enjoyed before the crash and his injuries.
17. Because of his failure to yield the right of way and his failure to pay attention committed by Michael Caplan, who was acting within his scope of employment with the Defendant United States of America and/or United States Postal Service, Plaintiff David Fox was and has been caused to suffer the harms and losses set forth herein.
18. Defendant United States of America and/or United States Postal Service are responsible for the negligent acts and/or omissions of Michael Caplan under the doctrine of respondeat superior, agency and/or pursuant to 28 U.S.C. § 1346(b)(1).
19. Michael Caplan was an employee of the United States Postal Service at the time of the crash.
20. Michael Caplan was driving a vehicle issued by the United States Postal Service and was acting within the scope of his employment while driving the vehicle that caused the crash.
21. At all relevant times, Michael Caplan owed a duty to operate the vehicle under control and to pay attention in a reasonable and prudent manner under the circumstances.

22. Michael Caplan breached his duty when he negligently attempted to turn his truck directly into the path of Plaintiff David Fox.

23. Defendant United States of America is liable for Plaintiff David Fox's injuries, losses, harms and damages caused to him.

WHEREFORE, Plaintiff demands a jury trial and judgment against Defendant individually, jointly and severally plus costs, disbursements, reasonable attorneys fees, interest, and whatever other relief the Court deems just and equitable.

Dated: 10-8-20, 2020

Mark A. Smith, Esquire



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#### **ACKNOWLEDGMENT**

The undersigned hereby acknowledges that sanctions, including costs, disbursements, and reasonable attorney fees, may be awarded pursuant to 28 U.S. Code Chapter 171 § 2671-80 to the party against whom the allegations in this pleading are asserted.

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